

REPUBLIC OF KENYA
Justus Kaibunga Laichena v Erastus M Mureithi
High Court of Kenya at Nairobi
June 26, 2001
R Kuloba, Judge
Civil Case No 677 of 1997

June 26, 2001 R Kuloba, Judge delivered the following judgment.

This is a suit arising out of a road accident in which the plaintiff sustained personal injuries. He seeks an award of general and special damages. The evidence is that the plaintiff was a passenger on a motor vehicle driven by the first defendant on September 7, 1995, along the Nairobi – Thika Road, when the vehicle went off the road near Blue Post Hotel, and after hearing a loud bang, the next thing the plaintiff realized was that he was lying in a hospital bed with various bodily injuries which he described. He said that before this happened, he had seen the vehicle being driven very fast, and then it went out of control because of over speeding, leading to the accident. It must be said at the outset that there is no case pleaded and made out against the second defendant. The reason for saying this is, that there is no allegation in the amended plaint to show how the second defendant is connected with the motor vehicle driven by the first defendant. At the hearing, no evidence was called to connect the second defendant to the vehicle or the accident.

In the written statement of defence the second defendant denied that he was the owner of the motor vehicle in question, and further denied that the first defendant was his servant or agent. In the light of these denials, there should have been evidence to prove ownership of the vehicle, and whether the first defendant was a servant or agent of the second defendant. There was no such evidence on any of these matters. And with regard to ownership, since it was not pleaded, no evidence could be led on it without a prior amendment to bring it in to the pleadings. Accordingly, the suit is dismissed as against the second defendant, for the foregoing reasons. Concerning the first defendant, it was pleaded, and, indeed evidence bears this out, that he was driving the motor vehicle carrying the plaintiff, and it had an accident. I accept the evidence that it was driven in such a manner that the accident occurred. There was no evidence of external forces or inherent malfunctioning in the car of which the first defendant was unaware and put the control of the vehicle beyond human precaution. The court is satisfied that the accident was probably due to excessive speeding in all the circumstances.

The plaintiff had nothing to do with the causing of the accident. The first defendant was wholly at fault. The first defendant is liable in negligence. According to the evidence given, the plaintiff sustained a number of injuries on the head and on the left upper limb, and he lost consciousness for some time. He was hospitalized for twelve days. Medical examination showed a cut wound over the right forehead and face, bruises over the right eye, comminuted fractures in the middle third of the left humerus (which was treated by open reduction and plating), a fracture of the right zygomatic arch and lateral wall of the maxillary sinus related to the injury to the right side of the face. A subsequent check of the left humerus revealed solid union of the left humerus. He still complains of pain over the right side of the face and over the left upper arm if he does heavy work well united, and the cost of remaining the plate would be Kshs.60,000/=. Following the head injury, there has been severe sensorineural hearing loss involving high frequencies, and this can continue to deteriorate until the sensory organ is completely damaged. A hearing aid that can be used has to be introduced into the cochlear itself. As at October 1998, the cost of conventional hearing aids was put at about Kshs.150,000/=.

This medical information is in the various medical reports which were produced in the course of the hearing, as part of the evidence. The injuries led the plaintiff to incur a number of expenses, in the form of the cost of medical treatment which he stated to be Kshs.376,500/95, medical reports costing Kshs.1,000, and fees for police abstract of Kshs.100. The plaintiff is a University teacher, with an impaired hearing, the impairment resulting from the injuries he suffered in the accident. He can hear with difficulty, but in the right ear. The left ear is about 100% deaf; and the right ear is about 75% deaf. He cannot hear easily a person speaking at a distance of 10 to 15 feet away, while a person within a range of 3 to 4 feet away has

to shout aloud for the plaintiff to hear him. He has suffered the worst experience when students ask him questions in the lecture room. Attending professional conferences is a problem for him as he does not hear most of the proceedings, so that his participation is severely limited. University senate and departmental meetings are proving a problem for him. (He is a departmental head and he has to attend these meetings). I discounted his estimated earning of Kshs.120,000 per year, had he attended a training course in the United States of America, but which he did not attend owing, he says, to the accident. This is a speculative surmising.

The court having paid full attention to the injuries and their adverse consequences, and considering the nature of his profession and employment, it is of the opinion that a fair and reasonable sum in general damages of kshs.1,200,000/=. The court is satisfied that the plaintiff incurred special loss, resulting in special damages of Kshs.376,500.95. Accordingly, there shall be judgment for the plaintiff against the first defendant in the sum of Kshs.1,200,000 general damages and Kshs.376,500/95 special damages. The first defendant shall pay the costs of this suit. For the benefit of pleaders and other legal advisers who undertake to represent lay persons in litigation, I end this judgment wondering why there was a lackluster pleading and adduction of evidence about the second defendant who is alleged to have been an employer or principal of the first defendant. Anyway, that was the chosen way of the learned advocate for the plaintiff. The suit against the second defendant is dismissed, and in the special circumstances of this case I do not award any costs in that regard; and the suit against the first defendant succeeds, and there shall be judgment for the plaintiff against the first defendant with costs, as aforesaid. Orders accordingly.